



BILLING CODE: 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1014 and 1015

[Docket No. CFPB-2011-0027]

RIN 3170-AA06

Mortgage Acts and Practices—Advertising (Regulation N)

Mortgage Assistance Relief Services (Regulation O)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the Bureau of Consumer Financial Protection (Bureau) as of July 21, 2011. The Bureau is in the process of republishing the regulations implementing those laws with technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. In light of the transfer of the Federal Trade Commission's (FTC's) rulemaking authority for section 626 of the Omnibus Appropriations Act, 2009 (Omnibus Appropriations Act) to the Bureau, the Bureau is publishing for public comment an interim final rule establishing a new Regulation N (Mortgage Acts and Practices—Advertising Rule) and a new Regulation O (Mortgage Assistance Relief Services Rule). This interim final rule does not impose any new substantive obligations on persons subject to the existing Mortgage Acts and Practices—Advertising Rule or the existing Mortgage Assistance Relief Services Rule, previously published by the FTC.

DATES: This interim final rule is effective December 30, 2011. Comments must be received

on or before [INSERT DATE THAT IS 60 DAYS FROM THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2011-0027 or RIN 3170-AA06, by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1500 Pennsylvania Ave, NW, (Attn: 1801 L Street), Washington, DC 20220.
- *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street, NW, Washington, DC 20006.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street, NW, Washington DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Jane Gao or Krista Ayoub, Office of Regulations, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted section 626 of the Omnibus Appropriations Act, 2009 (Omnibus Appropriations Act) on March 11, 2009 and directed the Federal Trade Commission (FTC) to commence a rulemaking proceeding within 90 days of enactment with respect to mortgage loans.¹ On May 22, 2009, the enactment of the Credit Card Accountability Responsibility and Disclosure Act of 2009² clarified the FTC's rulemaking authority under the Omnibus Appropriations Act to specify that the FTC's rulemaking based on its authority pursuant to the Omnibus Appropriations Act "shall relate to unfair or deceptive acts or practices regarding mortgage loans," which may involve loan modification and foreclosure rescue services.³

Prior to July 21, 2011, rulemaking authority for the Omnibus Appropriations Act was vested in the FTC. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)⁴ amended a number of consumer financial protection laws, including the Omnibus Appropriations Act. In addition to various substantive amendments, the Dodd-Frank Act transferred rulemaking authority for the Omnibus Appropriations Act to the Bureau of Consumer Financial Protection (Bureau), effective July 21, 2011. *See* sections 1061 and 1097 of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act and the Omnibus Appropriations Act, as amended,

¹ Pub. L. 111-8, 123 Stat. 524 (2009). The Omnibus Appropriations Act also directed the FTC to use notice and comment procedures under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, to promulgate rules pursuant to the Omnibus Appropriations Act in lieu of the procedures set forth in section 18 of the FTC Act, 15 U.S.C. 57a. The FTC noted in its Advance Notice of Proposed Rulemaking: Mortgage Acts and Practices, 74 FR 26118 (June 1, 2009), that because Omnibus Appropriations Act rulemaking is not undertaken pursuant to section 18, 15 U.S.C. 57a(f), Federal banking agencies are not required to promulgate substantially similar regulations for entities within their jurisdiction. *Id.* at 26119, note 2.

² Pub. L. 111-24, 123 Stat. 1734 (2009).

³ *Id.* Section 511(a)(1)(B).

⁴ Pub. L. 111-203, 124 Stat. 1376 (2010).

the Bureau is publishing for public comment an interim final rule establishing a new Regulation N (Mortgage Acts and Practices—Advertising), 12 CFR Part 1014, and a new Regulation O (Mortgage Assistance Relief Services), 12 CFR Part 1015, implementing the Omnibus Appropriations Act.

II. Summary of the Interim Final Rule

A. General

The interim final rule substantially duplicates the FTC’s Mortgage Acts and Practices—Advertising Rule as the Bureau’s new Regulation N, 12 CFR Part 1014, and the FTC’s Mortgage Assistance Relief Services Rule as the Bureau’s new Regulation O, 12 CFR Part 1015, making only certain non-substantive, technical, formatting, and stylistic changes. To minimize any potential confusion, other than republishing 16 CFR Parts 321 and 322 with the Bureau’s part number, the Bureau is preserving where possible the numbering the FTC used in the two rules. Additionally, while this interim final rule generally incorporates the FTC’s existing regulatory text, the rule has been edited as necessary to reflect nomenclature and other technical amendments required by the Dodd-Frank Act. Notably, this interim final rule does not impose any new substantive obligations on regulated entities. In future rulemakings, the Bureau expects to amend Regulations N and O to implement certain other changes to the Omnibus Appropriations Act made by the Dodd-Frank Act, such as expanding the scope of Regulations N and O to include persons excluded from coverage under the FTC’s existing 16 CFR Parts 321 and 322 due to the fact that they are not subject to the FTC’s enforcement jurisdiction.⁵

⁵ The regulatory text of the FTC’s Mortgage Acts and Practices—Advertising Rule contains a clear statement that the rule only applies to persons over which the FTC has jurisdiction under the Federal Trade Commission Act in the scope section of the regulation. *See* 16 CFR 321.1. The existing text of the Mortgage Assistance Relief Services Rule does not contain a similar statement in the scope section of the regulation; however, in the definitions section of the regulation, the definition of “person” subject to the regulation specifically excludes entities excluded from the

B. Specific Changes

References to the FTC’s rulemaking authority have been replaced with references to the Bureau. Conforming edits have been made to internal cross-references. Historical references that are no longer applicable, and references to effective dates that have passed, have been removed as appropriate. In addition, with respect to the Mortgage Assistance Relief Services Rule, the Bureau is correcting a citation error in the FTC’s existing § 322.9(c). As adopted by the FTC, § 322.9(c) contains a cross-reference to § 322.10(a). The correct citation should be to §§ 322.9(a) and (b). The Bureau is republishing § 322.9(c) as § 1015.9(c) with the citation corrected to read §§ 1015.9(a) and (b).

III. Legal Authority

A. Rulemaking Authority

The Bureau is issuing this interim final rule pursuant to its authority under the Omnibus Appropriations Act and the Dodd-Frank Act. Effective July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau all of the FTC’s authority under an enumerated consumer law to prescribe rules, issue guidelines, conduct studies, or issue reports.⁶ The Omnibus Appropriations Act is an enumerated consumer law.⁷ Accordingly, effective July 21, 2011, the authority of the FTC to issue regulations pursuant to the Omnibus Appropriations Act transferred to the Bureau.⁸

FTC’s jurisdiction under the Federal Trade Commission Act. *See* 16 CFR 322.2. FTC staff recommended to the Bureau that the Bureau add a clear statement in the scope section of the Mortgage Assistance Relief Services Rule that states the rule does not apply to entities over which the FTC lacks jurisdiction. Accordingly, the Bureau has added the following sentence, “This part applies to persons over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act.” at the end of § 1015.1.

⁶ Pub. L. 111-203, section 1061(b)(5).

⁷ *Id.* Section 1002(12)(Q) (defining “enumerated consumer laws” to include the Omnibus Appropriations Act).

⁸ Section 1066 of the Dodd-Frank Act grants the Secretary of the Treasury interim authority to perform certain functions of the Bureau. Pursuant to that authority, Treasury is publishing this interim final rule on behalf of the

The Omnibus Appropriations Act, as amended, authorizes the Bureau to issue regulations in accordance with section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, to carry out the provisions of the Omnibus Appropriations Act. These regulations may pertain to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. In its existing regulations, the FTC used this Omnibus Appropriations Act authority to adopt the Mortgage Acts and Practices—Advertising Rule and the Mortgage Assistance Relief Services Rule.

B. Authority To Issue an Interim Final Rule Without Prior Notice and Comment

The Administrative Procedure Act (APA)⁹ generally requires public notice and an opportunity to comment before promulgation of regulations.¹⁰ The APA provides exceptions to notice-and-comment procedures, however, where an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest or when a rulemaking relates to agency organization, procedure, and practice.¹¹ The Bureau finds that there is good cause to conclude that providing notice and opportunity for comment would be unnecessary and contrary to the public interest under these circumstances. In addition, substantially all the changes made by this interim final rule, which were necessitated by the Dodd-Frank Act's transfer of Omnibus Appropriations Act authority from the FTC to the Bureau, relate to agency organization, procedure, and practice and are thus exempt from the APA's notice-and comment requirements.

Bureau. Until this and other interim final rules take effect, existing regulations for which rulemaking authority transferred to the Bureau continue to govern persons covered by this rule. *See* 76 FR 43569 (July 21, 2011).

⁹ 5 U.S.C. 551 *et seq.*

¹⁰ 5 U.S.C. 553(b), (c).

¹¹ 5 U.S.C. 553(b)(3)(A), (B).

The Bureau's good cause findings are based on the following considerations. As an initial matter, the FTC's existing regulations were a result of notice-and-comment rulemaking to the extent required. Moreover, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Rather, the interim final rule makes only non-substantive, technical changes to the existing text of the regulations, such as renumbering, changing internal cross-references, and replacing appropriate nomenclature to reflect the transfer of authority to the Bureau. Given the technical nature of these changes, and the fact that the interim final rule does not impose any additional substantive requirements on covered entities, an opportunity for prior public comment is unnecessary. In addition, recodifying the FTC's regulations to reflect the transfer of authority to the Bureau will help facilitate compliance with the Omnibus Appropriations Act and its implementing regulations, and will help reduce uncertainty regarding the applicable regulatory framework. Using notice-and-comment procedures would delay this process and thus be contrary to the public interest.

The APA generally requires that rules be published not less than 30 days before their effective dates. *See* 5 U.S.C. 553(d). As with the notice and comment requirement, however, the APA allows an exception when "otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The Bureau finds that there is good cause for providing less than 30 days notice here. A delayed effective date would harm consumers and regulated entities by needlessly perpetuating discrepancies between the amended statutory text and the implementing regulations, thereby hindering compliance and prolonging uncertainty regarding the applicable regulatory framework.¹²

¹² This interim final rule is one of 14 companion rulemakings that together restate and recodify the implementing regulations under 14 existing consumer financial laws (part III.C, below, lists the 14 laws involved). In the interest of proper coordination of this overall regulatory framework, which includes numerous cross-references among some

In addition, delaying the effective date of the interim final rule for 30 days would provide no practical benefit to regulated entities in this context and in fact could operate to their detriment. As discussed above, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Instead, the rule makes only non-substantive, technical changes to the existing text of the regulations. Thus, regulated entities that are already in compliance with the existing rules will not need to modify business practices as a result of this rule.

C. Section 1022(b)(2) of the Dodd-Frank Act

In developing the interim final rule, the Bureau has conducted an analysis of potential benefits, costs, and impacts.¹³ The Bureau believes that the interim final rule will benefit consumers and covered persons by updating and recodifying Regulations N and O to reflect the transfer of authority to the Bureau and certain other changes mandated by the Dodd-Frank Act. This will help facilitate compliance with the Omnibus Appropriations Act and its implementing regulations and help reduce any uncertainty regarding the applicable regulatory framework. The interim final rule will not impose any new substantive obligations on consumers or covered persons and is not expected to have any impact on consumers' access to consumer financial products and services.

of the regulations, the Bureau is establishing the same effective date of December 30, 2011 for those rules published on or before that date and making those published thereafter (if any) effective immediately.

¹³ Section 1022(b)(2)(A) of the Dodd-Frank Act addresses the consideration of the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) requires that the Bureau "consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies." The manner and extent to which these provisions apply to interim final rules and to benefits, costs, and impacts that are compelled by statutory changes rather than discretionary Bureau action is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

Although not required by the interim final rule, covered entities may incur some costs in updating compliance manuals and related materials to reflect the new numbering and other technical changes reflected in the new Regulations N and O. The Bureau has worked to reduce any such burden by preserving the existing numbering to the extent possible and believes that such costs will likely be minimal. These changes could be handled in the short term by providing a short, standalone summary alerting users to the changes and in the long term could be combined with other updates at the firm's convenience. The Bureau intends to continue investigating the possible costs to affected entities of updating manuals and related materials to reflect these changes and solicits comments on this and other issues discussed in this section.

The interim final rule will have no unique impact on depository institutions or credit unions with \$10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act. Also, the interim final rule will have no unique impact on rural consumers.

In undertaking the process of recodifying Regulations N and O, as well as regulations implementing thirteen other consumer financial laws,¹⁴ the Bureau consulted the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Department of Housing and Urban Development, including with respect to consistency with any prudential, market, or systemic objectives that may be administered by

¹⁴ The fourteen laws implemented by this and its companion rulemakings are: the Consumer Leasing Act, the Electronic Fund Transfer Act (except with respect to section 920 of that Act), the Equal Credit Opportunity Act, the Fair Credit Reporting Act (except with respect to sections 615(e) and 628 of that act), the Fair Debt Collection Practices Act, Subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act, sections 502 through 509 of the Gramm-Leach-Bliley Act (except for section 505 as it applies to section 501(b)), the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act, the S.A.F.E. Mortgage Licensing Act, the Truth in Lending Act, the Truth in Savings Act, section 626 of the Omnibus Appropriations Act, 2009, and the Interstate Land Sales Full Disclosure Act.

such agencies.¹⁵ The Bureau also has consulted with the Office of Management and Budget for technical assistance. The Bureau expects to have further consultations with the appropriate Federal agencies during the comment period.

IV. Request for Comment

Although notice and comment rulemaking procedures are not required, the Bureau invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule. The Bureau is also seeking comment in response to a notice published at 76 FR 75825 (Dec. 5, 2011) concerning its efforts to identify priorities for streamlining regulations that it has inherited from other Federal agencies to address provisions that are outdated, unduly burdensome, or unnecessary.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.¹⁶ The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.¹⁷ The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an

¹⁵ In light of the technical but voluminous nature of this recodification project, the Bureau focused the consultation process on a representative sample of the recodified regulations, while making information on the other regulations available. The Bureau expects to conduct differently its future consultations regarding substantive rulemakings.

¹⁶ 5 U.S.C. 601 *et seq.*

¹⁷ 5 U.S.C. 603, 604.

IRFA is required.¹⁸

The IRFA and FRFA requirements described above apply only where a notice of proposed rulemaking is required,¹⁹ and the panel requirement applies only when a rulemaking requires an IRFA.²⁰ As discussed above in part III, a notice of proposed rulemaking is not required for this rulemaking.

In addition, as discussed above, this interim final rule has only a minor impact on entities subject to Regulations N and O. The rule imposes no new, substantive obligations on covered entities. Accordingly, the undersigned certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The Bureau may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule contains information collection requirements under the Paperwork Reduction Act (PRA), which have been previously approved by OMB, and the ongoing PRA burden for which is unchanged by this rule. There are no new information collection requirements in this interim final rule. The Bureau's OMB control numbers for this information collection are: 3170-0009 for Regulation N (Mortgage Acts and Practices—Advertising) and 3170-0007 for Regulation O (Mortgage Assistance Relief Services).

List of Subjects in 12 CFR Parts 1014 and 1015

Advertising, Communications, Consumer protection, Credit, Mortgages, Business practices related to mortgage loans, Trade Practices, Telemarketing.

¹⁸ 5 U.S.C. 609.

¹⁹ 5 U.S.C. 603(a), 604(a); 5 U.S.C. 553(b)(B).

²⁰ 5 U.S.C. 609(b).

Authority and Issuance

For the reasons set forth above, the Bureau of Consumer Financial Protection adds Parts 1014 and 1015 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

PART 1014—MORTGAGE ACTS AND PRACTICES—ADVERTISING (REGULATION N)

Sec.

1014.1 Scope of regulations in this part.

1014.2 Definitions.

1014.3 Prohibited representations.

1014.4 Waiver not permitted.

1014.5 Recordkeeping requirements.

1014.6 Actions by states.

1014.7 Severability.

AUTHORITY: 12 U.S.C. 5512, 5581; 15 U.S.C. 1638 note.

§ 1014.1 Scope of regulations in this part.

This part, known as Regulation N, is issued by the Bureau of Consumer Financial Protection to implement the 2009 Omnibus Appropriations Act, Pub. L. 111-8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. 111-24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, Pub. L. 111-203, section 1097, 124 Stat. 1376 (July 21, 2010). This part applies to persons over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act.

§ 1014.2 Definitions.

For the purposes of this part:

Commercial communication means any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing goods or services, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, on-hold script, upsell script, training materials provided to telemarketing firms, program-length commercial (“infomercial”), the internet, cellular network, or any other medium. Promotional materials and items and webpages are included in the term commercial communication.

Consumer means a natural person to whom a mortgage credit product is offered or extended.

Credit means the right to defer payment of debt or to incur debt and defer its payment.

Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes any of the following if used as a residence: an individual condominium unit, cooperative unit, mobile home, manufactured home, or trailer.

Mortgage credit product means any form of credit that is secured by real property or a dwelling and that is offered or extended to a consumer primarily for personal, family, or household purposes.

Person means any individual, group, unincorporated association, limited or general

partnership, corporation, or other business entity.

Term means any of the fees, costs, obligations, or characteristics of or associated with the product. It also includes any of the conditions on or related to the availability of the product.

§ 1014.3 Prohibited representations.

It is a violation of this part for any person to make any material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product, including but not limited to misrepresentations about:

(a) The interest charged for the mortgage credit product, including but not limited to misrepresentations concerning:

(1) The amount of interest that the consumer owes each month that is included in the consumer's payments, loan amount, or total amount due, or

(2) Whether the difference between the interest owed and the interest paid is added to the total amount due from the consumer;

(b) The annual percentage rate, simple annual rate, periodic rate, or any other rate;

(c) The existence, nature, or amount of fees or costs to the consumer associated with the mortgage credit product, including but not limited to misrepresentations that no fees are charged;

(d) The existence, cost, payment terms, or other terms associated with any additional product or feature that is or may be sold in conjunction with the mortgage credit product, including but not limited to credit insurance or credit disability insurance;

(e) The terms, amounts, payments, or other requirements relating to taxes or insurance associated with the mortgage credit product, including but not limited to misrepresentations about:

(1) Whether separate payment of taxes or insurance is required; or

(2) The extent to which payment for taxes or insurance is included in the loan payments, loan amount, or total amount due from the consumer;

(f) Any prepayment penalty associated with the mortgage credit product, including but not limited to misrepresentations concerning the existence, nature, amount, or terms of such penalty;

(g) The variability of interest, payments, or other terms of the mortgage credit product, including but not limited to misrepresentations using the word “fixed”;

(h) Any comparison between:

(1) Any rate or payment that will be available for a period less than the full length of the mortgage credit product; and

(2) Any actual or hypothetical rate or payment;

(i) The type of mortgage credit product, including but not limited to misrepresentations that the product is or involves a fully amortizing mortgage;

(j) The amount of the obligation, or the existence, nature, or amount of cash or credit available to the consumer in connection with the mortgage credit product, including but not limited to misrepresentations that the consumer will receive a certain amount of cash or credit as part of a mortgage credit transaction;

(k) The existence, number, amount, or timing of any minimum or required payments, including but not limited to misrepresentations about any payments or that no payments are required in a reverse mortgage or other mortgage credit product;

(l) The potential for default under the mortgage credit product, including but not limited to misrepresentations concerning the circumstances under which the consumer could default for nonpayment of taxes, insurance, or maintenance, or for failure to meet other obligations;

(m) The effectiveness of the mortgage credit product in helping the consumer resolve difficulties in paying debts, including but not limited to misrepresentations that any mortgage credit product can reduce, eliminate, or restructure debt or result in a waiver or forgiveness, in whole or in part, of the consumer's existing obligation with any person;

(n) The association of the mortgage credit product or any provider of such product with any other person or program, including but not limited to misrepresentations that:

(1) The provider is, or is affiliated with, any governmental entity or other organization; or

(2) The product is or relates to a government benefit, or is endorsed, sponsored by, or affiliated with any government or other program, including but not limited to through the use of formats, symbols, or logos that resemble those of such entity, organization, or program;

(o) The source of any commercial communication, including but not limited to misrepresentations that a commercial communication is made by or on behalf of the consumer's current mortgage lender or servicer;

(p) The right of the consumer to reside in the dwelling that is the subject of the mortgage credit product, or the duration of such right, including but not limited to misrepresentations concerning how long or under what conditions a consumer with a reverse mortgage can stay in the dwelling;

(q) The consumer's ability or likelihood to obtain any mortgage credit product or term, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such product or term;

(r) The consumer's ability or likelihood to obtain a refinancing or modification of any mortgage credit product or term, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such refinancing or

modification; and

(s) The availability, nature, or substance of counseling services or any other expert advice offered to the consumer regarding any mortgage credit product or term, including but not limited to the qualifications of those offering the services or advice.

§ 1014.4 Waiver not permitted.

It is a violation of this part for any person to obtain, or attempt to obtain, a waiver from any consumer of any protection provided by or any right of the consumer under this part.

§ 1014.5 Recordkeeping requirements.

(a) Any person subject to this part shall keep, for a period of twenty-four months from the last date the person made or disseminated the applicable commercial communication regarding any term of any mortgage credit product, the following evidence of compliance with this part:

(1) Copies of all materially different commercial communications as well as sales scripts, training materials, and marketing materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period;

(2) Documents describing or evidencing all mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such mortgage credit product available to consumers; and

(3) Documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such additional product or

service available to consumers.

(b) Any person subject to this part may keep the records required by paragraph (a) of this section in any legible form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required under paragraph (a) of this section shall be a violation of this part.

§ 1014.6 Actions by states.

Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to section 626(b) of the 2009 Omnibus Appropriations Act, Pub. L. 111-8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. 111-24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by Pub. L. 111-203, section 1097, 124 Stat. 2102 (July 21, 2010).

§ 1014.7 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Bureau of Consumer Financial Protection's intention that the remaining provisions shall continue in effect.

PART 1015—MORTGAGE ASSISTANCE RELIEF SERVICES (REGULATION O)

Sec.

1015.1 Scope of regulations in this part.

1015.2 Definitions.

1015.3 Prohibited representations.

1015.4 Disclosures required in commercial communications.

1015.5 Prohibition on collection of advance payments and related disclosures.

1015.6 Assisting and facilitating.

1015.7 Exemptions.

1015.8 Waiver not permitted.

1015.9 Recordkeeping and compliance requirements.

1015.10 Actions by states.

1015.11 Severability.

AUTHORITY: 12 U.S.C. 5512, 5581; 15 U.S.C. 1638 note.

§ 1015.1 Scope of regulations in this part.

This part, known as Regulation O, is issued by the Bureau of Consumer Financial Protection to implement the 2009 Omnibus Appropriations Act, Pub. L. 111-8, section 626, 123 Stat. 524 (Mar. 11, 2009), as clarified by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. 111-24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, Pub. L. 111-203, section 1097, 124 Stat. 1376 (July 21, 2010). This part applies to persons over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act.

§ 1015.2 Definitions.

For the purposes of this part:

Clear and prominent means:

(1) In textual communications, the required disclosures shall be easily readable; in a high degree of contrast from the immediate background on which it appears; in the same languages that are substantially used in the commercial communication; in a format so that the disclosure is distinct from other text, such as inside a border; in a distinct type style, such as bold; parallel to

the base of the commercial communication, and, except as otherwise provided in this rule, each letter of the disclosure shall be, at a minimum, the larger of 12-point type or one-half the size of the largest letter or numeral used in the name of the advertised website or telephone number to which consumers are referred to receive information relating to any mortgage assistance relief service. Textual communications include any communications in a written or printed form such as print publications or words displayed on the screen of a computer;

(2) In communications disseminated orally or through audible means, such as radio or streaming audio, the required disclosures shall be delivered in a slow and deliberate manner and in a reasonably understandable volume and pitch;

(3) In communications disseminated through video means, such as television or streaming video, the required disclosures shall appear simultaneously in the audio and visual parts of the commercial communication and be delivered in a manner consistent with paragraphs (1) and (2) of this definition. The visual disclosure shall be at least four percent of the vertical picture or screen height and appear for the duration of the oral disclosure;

(4) In communications made through interactive media, such as the internet, online services, and software, the required disclosures shall:

- (i) Be consistent with paragraphs (1) through (3) of this definition;
 - (ii) Be made on, or immediately prior to, the page on which the consumer takes any action to incur any financial obligation;
 - (iii) Be unavoidable, *i.e.*, visible to consumers without requiring them to scroll down a webpage; and
 - (iv) Appear in type at least the same size as the largest character of the advertisement;
- (5) In all instances, the required disclosures shall be presented in an understandable

language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them; and

(6) For program-length television, radio, or internet-based multimedia commercial communications, the required disclosures shall be made at the beginning, near the middle, and at the end of the commercial communication.

Client trust account means a separate account created by a licensed attorney for the purpose of holding client funds, which is:

(1) Maintained in compliance with all applicable state laws and regulations, including licensing regulations; and

(2) Located in the state where the attorney's office is located, or elsewhere in the United States with the consent of the consumer on whose behalf the funds are held.

Commercial communication means any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing any service, plan, or program, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, onhold script, upsell script, training materials provided to telemarketing firms, program-length commercial ("infomercial"), the internet, cellular network, or any other medium. Promotional materials and items and webpages are included in the term "commercial communication."

(1) General Commercial Communication means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage

assistance relief on behalf of the consumer, or otherwise agreeing to use the mortgage assistance relief service, and that is not directed at a specific consumer.

(2) Consumer-Specific Commercial Communication means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the mortgage assistance relief service, and that is directed at a specific consumer.

Consumer means any natural person who is obligated under any loan secured by a dwelling.

Dwelling means a residential structure containing four or fewer units, whether or not that structure is attached to real property, that is primarily for personal, family, or household purposes. The term includes any of the following if used as a residence: an individual condominium unit, cooperative unit, mobile home, manufactured home, or trailer.

Dwelling loan means any loan secured by a dwelling, and any associated deed of trust or mortgage.

Dwelling Loan Holder means any individual or entity who holds the dwelling loan that is the subject of the offer to provide mortgage assistance relief services.

Material means likely to affect a consumer's choice of, or conduct regarding, any mortgage assistance relief service.

Mortgage Assistance Relief Service means any service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

(1) Stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer's dwelling, any repossession of the consumer's dwelling, or otherwise saving the

consumer's dwelling from foreclosure or repossession;

(2) Negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;

(3) Obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;

(4) Negotiating, obtaining, or arranging any extension of the period of time within which the consumer may:

(i) Cure his or her default on a dwelling loan,

(ii) Reinstate his or her dwelling loan,

(iii) Redeem a dwelling, or

(iv) Exercise any right to reinstate a dwelling loan or redeem a dwelling;

(5) Obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or

(6) Negotiating, obtaining or arranging:

(i) A short sale of a dwelling,

(ii) A deed-in-lieu of foreclosure, or

(iii) Any other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.

Mortgage Assistance Relief Service Provider or Provider means any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service. This term does not include:

(1) The dwelling loan holder, or any agent or contractor of such individual or entity.

(2) The servicer of a dwelling loan, or any agent or contractor of such individual or

entity.

Person means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity, except to the extent that any person is specifically excluded from the Federal Trade Commission's jurisdiction pursuant to 15 U.S.C. 44 and 45(a)(2).

Servicer means the individual or entity responsible for:

(1) Receiving any scheduled periodic payments from a consumer pursuant to the terms of the dwelling loan that is the subject of the offer to provide mortgage assistance relief services, including amounts for escrow accounts under section 10 of the Real Estate Settlement Procedures Act (12 U.S.C. 2609); and

(2) Making the payments of principal and interest and such other payments with respect to the amounts received from the consumer as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract.

Telemarketing means a plan, program, or campaign which is conducted to induce the purchase of any service, by use of one or more telephones and which involves more than one interstate telephone call.

§ 1015.3 Prohibited representations.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a) Representing, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that a consumer cannot or should not contact or communicate with his or her lender or servicer.

(b) Misrepresenting, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to:

(1) The likelihood of negotiating, obtaining, or arranging any represented service or result, such as those set forth in the definition of Mortgage Assistance Relief Service in § 1015.2;

(2) The amount of time it will take the mortgage assistance relief service provider to accomplish any represented service or result, such as those set forth in the definition of Mortgage Assistance Relief Service in § 1015.2;

(3) That a mortgage assistance relief service is affiliated with, endorsed or approved by, or otherwise associated with:

(i) The United States government,

(ii) Any governmental homeowner assistance plan,

(iii) Any Federal, State, or local government agency, unit, or department,

(iv) Any nonprofit housing counselor agency or program,

(v) The maker, holder, or servicer of the consumer's dwelling loan, or

(vi) Any other individual, entity, or program;

(4) The consumer's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan;

(5) The terms or conditions of the consumer's dwelling loan, including but not limited to the amount of debt owed;

(6) The terms or conditions of any refund, cancellation, exchange, or repurchase policy for a mortgage assistance relief service, including but not limited to the likelihood of obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted, for a mortgage assistance relief service;

(7) That the mortgage assistance relief service provider has completed the represented services or has a right to claim, demand, charge, collect, or receive payment or other consideration;

(8) That the consumer will receive legal representation;

(9) The availability, performance, cost, or characteristics of any alternative to for-profit mortgage assistance relief services through which the consumer can obtain mortgage assistance relief, including negotiating directly with the dwelling loan holder or servicer, or using any nonprofit housing counselor agency or program;

(10) The amount of money or the percentage of the debt amount that a consumer may save by using the mortgage assistance relief service;

(11) The total cost to purchase the mortgage assistance relief service; or

(12) The terms, conditions, or limitations of any offer of mortgage assistance relief the provider obtains from the consumer's dwelling loan holder or servicer, including the time period in which the consumer must decide to accept the offer;

(c) Making a representation, expressly or by implication, about the benefits, performance, or efficacy of any mortgage assistance relief service unless, at the time such representation is made, the provider possesses and relies upon competent and reliable evidence that substantiates that the representation is true. For the purposes of this paragraph, competent and reliable evidence means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by individuals qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

§ 1015.4 Disclosures required in commercial communications.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a) *Disclosures in All General Commercial Communications*—Failing to place the following statements in every general commercial communication for any mortgage assistance relief service:

(1) “(Name of company) is not associated with the government, and our service is not approved by the government or your lender.”

(2) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of Mortgage Assistance Relief Service in § 1015.2, “Even if you accept this offer and use our service, your lender may not agree to change your loan.”

(3) The disclosures required by this paragraph must be made in a clear and prominent manner, and—

(i) In textual communications the disclosures must appear together and be preceded by the heading “IMPORTANT NOTICE,” which must be in bold face font that is two point-type larger than the font size of the required disclosures; and

(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement “Before using this service, consider the following information.”

(b) *Disclosures in All Consumer-Specific Commercial Communications*—Failing to disclose the following information in every consumer-specific commercial communication for any mortgage assistance relief service:

(1) “You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us (insert amount or method for calculating the amount) for our services.” For the purposes of this paragraph (b)(1), the amount “you will have to pay” shall consist of the total amount the consumer must pay to purchase, receive, and use all of the mortgage assistance relief services that are the subject of the sales offer, including, but not limited to, all fees and charges.

(2) “(Name of company) is not associated with the government, and our service is not approved by the government or your lender.”

(3) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of Mortgage Assistance Relief Service in § 1015.2, “Even if you accept this offer and use our service, your lender may not agree to change your loan.”

(4) The disclosures required by this paragraph must be made in a clear and prominent manner, and—

(i) In textual communications the disclosures must appear together and be preceded by the heading “IMPORTANT NOTICE,” which must be in bold face font that is two point-type larger than the font size of the required disclosures; and

(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement “Before using this service, consider the following information” and, in telephone communications, must be made at the beginning of the call.

(c) Disclosures in All General Commercial Communications, Consumer-Specific Commercial Communications, and Other Communications—In cases where the mortgage assistance relief service provider has represented, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that the consumer should temporarily or permanently discontinue payments, in whole or in part, on a dwelling loan, failing to disclose, clearly and prominently, and in close proximity to any such representation that “If you stop paying your mortgage, you could lose your home and damage your credit rating.”

§ 1015.5 Prohibition on collection of advance payments and related disclosures.

It is a violation of this rule for any mortgage assistance relief service provider to:

(a) Request or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer’s dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer’s dwelling loan holder or servicer;

(b) Fail to disclose, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, the following information: “This is an offer of mortgage assistance we obtained from your lender [or servicer]. You may accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [same amount as disclosed pursuant to § 1015.4(b)(1)] for our services.” The disclosure required by this paragraph must be made in a clear and prominent manner, on a separate written page, and preceded by the heading: “IMPORTANT NOTICE: Before buying this service, consider the following information.” The heading must be in bold face font that is two point-type larger than the font size of the required disclosure; or

(c)(1) Fail to provide, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, a notice from the consumer's dwelling loan holder or servicer that describes all material differences between the terms, conditions, and limitations associated with the consumer's current mortgage loan and the terms, conditions, and limitations associated with the consumer's mortgage loan if he or she accepts the dwelling loan holder's or servicer's offer, including but not limited to differences in the loan's:

- (i) Principal balance;
- (ii) Contract interest rate, including the maximum rate and any adjustable rates, if applicable;
- (iii) Amount and number of the consumer's scheduled periodic payments on the loan;
- (iv) Monthly amounts owed for principal, interest, taxes, and any mortgage insurance on the loan;
- (v) Amount of any delinquent payments owing or outstanding;
- (vi) Assessed fees or penalties; and
- (vii) Term

(2) The notice must be made in a clear and prominent manner, on a separate written page, and preceded by heading: "IMPORTANT INFORMATION FROM YOUR [name of lender or servicer] ABOUT THIS OFFER." The heading must be in bold face font that is two-point-type larger than the font size of the required disclosure.

(d) Fail to disclose in the notice specified in paragraph (c) of this section, in cases where the offer of mortgage assistance relief the provider obtained from the consumer's dwelling loan holder or servicer is a trial mortgage loan modification, the terms, conditions, and limitations of

this offer, including but not limited to:

(1) The fact that the consumer may not qualify for a permanent mortgage loan modification; and

(2) The likely amount of the scheduled periodic payments and any arrears, payments, or fees that the consumer would owe in failing to qualify.

§ 1015.6 Assisting and facilitating.

It is a violation of this rule for a person to provide substantial assistance or support to any mortgage assistance relief service provider when that person knows or consciously avoids knowing that the provider is engaged in any act or practice that violates this rule.

§ 1015.7 Exemptions.

(a) An attorney is exempt from this part, with the exception of § 1015.5, if the attorney:

(1) Provides mortgage assistance relief services as part of the practice of law;

(2) Is licensed to practice law in the state in which the consumer for whom the attorney is providing mortgage assistance relief services resides or in which the consumer's dwelling is located; and

(3) Complies with state laws and regulations that cover the same type of conduct the rule requires.

(b) An attorney who is exempt pursuant to paragraph (a) of this section is also exempt from § 1015.5 if the attorney:

(1) Deposits any funds received from the consumer prior to performing legal services in a client trust account; and

(2) Complies with all state laws and regulations, including licensing regulations, applicable to client trust accounts.

§ 1015.8 Waiver not permitted.

It is a violation of this rule for any person to obtain, or attempt to obtain, a waiver from any consumer of any protection provided by or any right of the consumer under this rule.

§ 1015.9 Recordkeeping and compliance requirements.

(a) Any mortgage assistance relief provider must keep, for a period of twenty-four (24) months from the date the record is created, the following records:

(1) All contracts or other agreements between the provider and any consumer for any mortgage assistance relief service;

(2) Copies of all written communications between the provider and any consumer occurring prior to the date on which the consumer entered into an agreement with the provider for any mortgage assistance relief service;

(3) Copies of all documents or telephone recordings created in connection with compliance with paragraph (b) of this section;

(4) All consumer files containing the names, phone numbers, dollar amounts paid, and descriptions of mortgage assistance relief services purchased, to the extent the mortgage assistance relief service provider keeps such information in the ordinary course of business;

(5) Copies of all materially different sales scripts, training materials, commercial communications, or other marketing materials, including websites and weblogs, for any mortgage assistance relief service; and

(6) Copies of the documentation provided to the consumer as specified in § 1015.5 of this rule;

(b) A mortgage assistance relief service provider also must:

(1) Take reasonable steps sufficient to monitor and ensure that all employees and

independent contractors comply with this rule. Such steps shall include the monitoring of communications directed at specific consumers, and shall also include, at a minimum, the following:

(i) If the mortgage assistance relief service provider is engaged in the telemarketing of mortgage assistance relief services, performing random, blind recording and testing of the oral representations made by individuals engaged in sales or other customer service functions;

(ii) Establishing a procedure for receiving and responding to all consumer complaints;
and

(iii) Ascertaining the number and nature of consumer complaints regarding transactions in which all employees and independent contractors are involved;

(2) Investigate promptly and fully each consumer complaint received;

(3) Take corrective action with respect to any employee or contractor whom the mortgage assistance relief service provider determines is not complying with this rule, which may include training, disciplining, or terminating such individual; and

(4) Maintain any information and material necessary to demonstrate its compliance with paragraphs (b)(1) through (3) of this section.

(c) A mortgage assistance relief provider may keep the records required by paragraphs (a) and (b) of this section in any form, and in the same manner, format, or place as it keeps such records in the ordinary course of business.

(d) It is a violation of this rule for a mortgage assistance relief service provider not to comply with this section.

§ 1015.10 Actions by states.

Any attorney general or other officer of a state authorized by the state to bring an action

under this part may do so pursuant to section 626(b) of the 2009 Omnibus Appropriations Act, Pub. L. 111-8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by Pub. L. 111-24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by Pub. L. 111-203, section 1097, 124 Stat. 2102 (July 21, 2010).

§ 1015.11 Severability.

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Bureau of Consumer Financial Protection's intention that the remaining provisions shall continue in effect.

Dated: October 24, 2011.

Alastair M. Fitzpayne,

Deputy Chief of Staff and Executive Secretary,

Department of the Treasury.

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